



International Program License Agreement

国际软件许可协议

國際程式授權合約

Mezinárodní licenční smlouva pro programy

Conditions Internationales d'Utilisation de Logiciels IBM

Internationale Nutzungsbedingungen für Programmpakete

Accordo Internazionale di Licenza di Programmi (IPLA)

プログラムのご使用条件

프로그램 라이선스 계약(IPLA)

Międzynarodowa Umowa Licencyjna na Program

Acordo Internacional de Licenciamento do Programa

Acuerdo Internacional de Programas Bajo Licencia (IPLA)

Uluslararası Program Lisans Sözleşmesi

# International Program License Agreement

## Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

**This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.**

### 1. Entitlement

#### License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

### **Money-back Guarantee**

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

### **Program Transfer**

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

## **2. Charges**

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

## **3. Limited Warranty**

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

IBM provides You with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support>. IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to the party (either IBM or its reseller) from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

**THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.**

#### **4. Limitation of Liability**

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

**UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:**

- 1. LOSS OF, OR DAMAGE TO, DATA;**
- 2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- 3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

#### **5. General**

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation

of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

## **6. Governing Law, Jurisdiction, and Arbitration**

### **Governing Law**

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

### **Jurisdiction**

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

## **Part 2 - Country-unique Terms**

### **AMERICAS**

**ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6):** *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

**BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6):** *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

**CANADA: General (Section 5):** *The following replaces item 7:*

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws in the Province of Ontario

**PERU: Limitation of Liability (Section 4):** *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

**UNITED STATES OF AMERICA: General (Section 5):** *The following is added to this section:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

## ASIA PACIFIC

**AUSTRALIA: Limited Warranty (Section 3):** *The following is added:*

The warranties specified in this Section are in addition to any rights You may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

**Limitation of Liability (Section 4):** *The following is added:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State or Territory in which You acquired the Program license

**CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

*The following is added to this section:*

### Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of Hong Kong Special Administrative Region of China

**INDIA: Limitation of Liability (Section 4):** *The following replaces the terms of items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way

related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

**General (Section 5):** *The following replaces the terms of item 5:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** *The following is added to this section:*

#### **Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**JAPAN: General (Section 5):** *The following is inserted after item 5:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

**MALAYSIA: Limitation of Liability (Section 4):** *The word "SPECIAL" in item 2 of the third paragraph is deleted:*

**NEW ZEALAND: Limited Warranty (Section 3):** *The following is added:*

The warranties specified in this Section are in addition to any rights You may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

**Limitation of Liability (Section 4):** *The following is added:*

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

**PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2):** *The following is added:*

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

**Governing Law, Jurisdiction, and Arbitration (Section 6):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America (except when local law requires otherwise)

**PHILIPPINES: Limitation of Liability (Section 4):** *The following replaces the terms of item 2 of the third paragraph:*

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

**Governing Law, Jurisdiction, and Arbitration (Section 6):** *The following is added to this section:*

#### **Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**SINGAPORE: Limitation of Liability (Section 4):** *The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.*

**General (Section 5):** *The following replaces the terms of item 7:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

**TAIWAN: Limited Warranty (Section 3):** The last paragraph is deleted.

## **EUROPE, MIDDLE EAST, AFRICA (EMEA)**

**Limited Warranty (Section 3):** *In the European Union, the following is added:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Limited Warranty provision set out above at section 3 of this Agreement. The territorial scope of the Limited Warranty is worldwide.



**Limitation of Liability (Section 4):** *In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

**Limitation of Liability (Section 4):** *In France and Belgium, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible

## **Governing Law, Jurisdiction, and Arbitration (Section 6)**

### **Governing Law**

The phrase "the laws of the country in which You acquired the Program license" is replaced by: 1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia; 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia,

Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna; 3) "the laws of Finland" in Estonia, Latvia, and Lithuania; 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

## **Jurisdiction**

*The following exceptions are added to this section:*

1) In **Austria** the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) in **Belgium and Luxembourg**, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent; 4) in **France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) in **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow; 6) in **South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg; 7) in **Turkey** all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) in the **United Kingdom**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

## **Arbitration**

In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia** all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In **Estonia, Latvia and Lithuania** all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators

will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

**AUSTRIA: Limited Warranty (Section 3):** *The following is inserted at the beginning of this Section:*

The Warranty Period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for a Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

*The final two paragraphs are replaced with the following:*

This is our sole obligation to You, except as otherwise required by applicable statutory law.

**General (Section 5):** The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

**GERMANY: Limited Warranty (Section 3):** *The same changes apply as those in **Limited Warranty (Section 3)** under Austria above.*

**Limitation of Liability (Section 4):** *The following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

**General (Section 5):** *The following replace the terms of item 5:*

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (Limited Warranty) of this Agreement.

**HUNGARY: Limitation of Liability (Section 4):** *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

**IRELAND: Limited Warranty (Section 3):** *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

**Limitation of Liability (Section 4):** *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) €125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### **Items for Which IBM is Not Liable**

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

**ITALY: General (Section 5):** *The following is added to this section:*

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

**SLOVAKIA: Limitation of Liability (Section 4):** *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

**General (Section 5):** *The terms of item 5 are replaced with the following:*

**THE PARTIES AGREE THAT ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER AS DEFINED BY THE LOCAL LAW (4 YEARS) FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.**

**SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND: Limited Warranty (Section 3):** *The following is added at the end of the first paragraph:*

notwithstanding any advice or assistance that IBM may have given to You prior to the selection of such Programs.

**SWITZERLAND: General (Section 5):** *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

**UNITED KINGDOM: Limited Warranty (Section 3):** *The following replaces the first sentence in the fourth paragraph of this section:*

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**Limitation of Liability (Section 4):** *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:
  - a. death or personal injury caused by the negligence of IBM;
  - b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and
  - c. subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) £75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### **Items for Which IBM is Not Liable**

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

## **Amendment to IBM International Program License Agreement**

This Amendment ("Amendment") to the IBM International Program License Agreement ("IPLA") Z125-3301-12 09/2002, effective as of August \_\_\_\_, 2004, (the "Effective Date") and is between International Business Machines Corporation ("IBM") and Circuit City Stores, Inc. ("you"). Capitalized terms used in this Amendment, but not defined herein will have the respective meaning ascribed to such terms in the IPLA.

As of the Effective Date, the following terms shall amend the terms of the IPLA, Part 1- General Terms, when you obtain a license to Programs pursuant to the terms of the IPLA:

### **Part 1 – General Terms**

1) The following are added as new sections 3A and 3B:

#### **3A. Intellectual Property Indemnification**

For purposes of this section, the term "Program" does not include the AIX operating system. The AIX operating system is covered in Section 3B below.

If a third party claims that the Program infringes that party's patent or copyright, IBM will defend you against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that you:

1. promptly notify IBM in writing of the claim; and
2. allow IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, you agree to permit IBM to enable you to continue to use the Program, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, you agree to return the Program to IBM on its written request. IBM will then give you a credit equal to the amount paid by you for the Program.

This is IBM's entire obligation to you regarding any claim of infringement.

#### **Claims for Which IBM is Not Responsible**

IBM has no obligation regarding any claim based on any of the following:

1. anything you provide which is incorporated into the Program or IBM's compliance with any designs, specifications, or instructions provided by you or by a third party on your behalf;

2. your modification of the Program, or the Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of the Program with other products not provided by IBM as a system, or the combination, operation or use of the Program with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of the Program for the benefit of a third party outside your Enterprise; or
4. infringement by a non-IBM product alone.

### **3B. Intellectual Property Indemnification for the AIX Operating System**

For the AIX operating system, Section 3A is repeated in its entirety but modified as follows:

The words "patent or" are deleted.

#### **2) The first paragraph of Section 4 ("Limitation of Liability") is replaced with the following:**

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) payments referred to in Sections 3A and 3B above; 2) damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is liable under applicable law; and 3) the amount of any other actual direct damages up to the greater of U.S. \$100,000 (or equivalent in your local currency) or the charges for the Program that is the subject of the claim.

#### **2) Subsection 1 of Section 4 ("Limitation of Liability") is replaced with the following:**

1. LOSS OF, OR DAMAGE TO, DATA, EXCEPT THAT IN THE EVENT OF LOSS OF, OR DAMAGE TO, DATA THAT IS CAUSED BY IBM, IBM WILL, AS ITS SOLE RESPONSIBILITY AND YOUR EXCLUSIVE REMEDY, PROVIDE REASONABLE ASSISTANCE TO YOU TO RESTORE SUCH DATA TO THE LAST BACK-UP COPY MAINTAINED BY YOU, PROVIDED THAT YOU PROVIDE ANY NECESSARY SOURCE MATERIALS;

**3) Section 5.4 is replaced in its entirety with the following:**

To the extent such permission is required by law, you and IBM agree to allow the other to store and use the other's business contact information, (employees' names and their business addresses, business phone numbers and business e-mail addresses) anywhere the other does business when such business contact information is provided in such a way that would lead a reasonable person to conclude that the person providing the business contact information understood that such business contact information would be used to contact them in the future. Such business contact information will be processed and used by each of us solely in connection with our business relationship, and may be provided to contractors acting on IBM's behalf, Business Partners, and assignees of IBM and its subsidiaries for uses consistent with our business relationship. If one of us no longer wishes the other to contact a particular person working for them or on their behalf, upon written request, the other will undertake reasonable efforts to cease sending information to that person; provided, however, that if certain business contact information is necessary for the continuation of the business relationship (for example, the person is the contact to whom invoices are sent), the party making the request will provide alternative business contact information for someone authorized to act for them or on their behalf.

**4) Section 5.5 is replaced in its entirety with the following:**

Neither you nor IBM will bring a legal action under this Agreement more than four years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

**Part 2 – Country-unique Terms**

**5) United States of America: Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase, "the laws of the State of New York, United States of America" is replaced with the following:

"the laws of the Commonwealth of Virginia, United States of America"



All other terms of the IPLA shall remain the same.

Except as modified by this Amendment, the IPLA shall remain in full force and effect. In the event of any conflict or inconsistency between the IPLA and this Amendment, this Amendment shall control.

*Agreed to:*

**Customer Company name:** Circuit City Stores, Inc.

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Date:

Enterprise number:

*Agreed to:*

**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Date:

Agreement number:

## **Amendment to IBM International Program License Agreement**

This Amendment ("Amendment") to the IBM International Program License Agreement ("IPLA") Z125-3301-12 09/2002, effective as of August \_\_, 2004, (the "Effective Date") and is between International Business Machines Corporation ("IBM") and Circuit City Stores, Inc. ("you"). Capitalized terms used in this Amendment, but not defined herein will have the respective meaning ascribed to such terms in the IPLA.

As of the Effective Date, the following terms shall amend the terms of the IPLA, Part 1- General Terms, when you obtain a license to Programs pursuant to the terms of the IPLA:

### **Part 1 – General Terms**

**1) The first paragraph of Section 4 ("Limitation of Liability") is replaced with the following:**

"Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for personal injury (including death) and damage to real property and tangible personal property for which IBM is liable under applicable law; and 3) the amount of any other actual direct damages up to the greater of U.S. \$100,000 (or equivalent in your local currency) or the charges for the Program that is the subject of the claim."

**2) Subsection 1 of Section 4 ("Limitation of Liability") is replaced with the following:**

"1. LOSS OF, OR DAMAGE TO, DATA, EXCEPT THAT IN THE EVENT OF LOSS OF, OR DAMAGE TO, DATA THAT IS CAUSED BY IBM, IBM WILL, AS ITS SOLE RESPONSIBILITY AND YOUR EXCLUSIVE REMEDY, PROVIDE REASONABLE ASSISTANCE TO YOU TO RESTORE SUCH DATA TO THE LAST BACK-UP COPY MAINTAINED BY YOU, PROVIDED THAT YOU PROVIDE ANY NECESSARY SOURCE MATERIALS;"

**3) Section 5.4 is replaced in its entirety with the following:**

"To the extent such permission is required by law, you and IBM agree to allow the other to store and use the other's business contact information, (employees' names and their business addresses, business phone numbers and business e-mail addresses) anywhere the other does business when such business contact information is provided in such a way that would lead a reasonable person to conclude that the person providing the business contact information understood that such business contact information would be used to contact them in the future. Such business contact information will be processed and used by each of us solely in connection with our business relationship, and may be provided to contractors acting on IBM's behalf, Business Partners, and assignees of IBM and its subsidiaries for uses consistent with our business relationship. If one of us no longer wishes the other to contact a particular person working for them or on their behalf, upon written request, the other will undertake reasonable efforts to cease sending information to that person; provided, however, that if certain business contact information is necessary for the continuation of the business relationship (for example, the person is the contact to whom invoices are sent), the party making the request will provide alternative business contact information for someone authorized to act for them or on their behalf."

**4) Section 5.5 is replaced in its entirety with the following:**

"Neither you nor IBM will bring a legal action under this Agreement more than four years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation."

**Part 2 – Country-unique Terms**

**5) United States of America: Governing Law, Jurisdiction, and Arbitration (Section 6):** The phrase, "the laws of the State of New York, United States of America" is replaced with the following:

"the laws of the Commonwealth of Virginia, United States of America"

All other terms of the IPLA shall remain the same.

Except as modified by this Amendment, the IPLA shall remain in full force and effect. In the event of any conflict or inconsistency between the IPLA and this Amendment, this Amendment shall control.

Agreed to:  
Customer Company name: Circuit City Stores, Inc.

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Date:

Enterprise number:

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Date:

Agreement number: